

RECEIVED

AUG 14 2020

BOISEY LEVERN NEAL

DEFENDANT

Criminal DIV THE CIRCUIT COURT
Circuit Court For
Baltimore City

:BALTIMORE CITY

V.

:Case No.: 207255049-51

:

STATE OF MARYLAND,

:

RESPONDENT

:

.....o0o.....

APPLICATION FOR LEAVE TO APPEAL & NOTICE OF APPEAL

Mr. or Ms. Clerk of the Circuit Court:

Please have the Office of the Court Reporter transcribe and prepare the record on behalf of BOISEY LEVERN NEAL, whose applying for an Application for Leave to Appeal & Notice of Appeal from the ruling by the Judge on July 20, 2020.

Please enter an appeal to the Court of Special Appeals of Maryland from the judgment or order entered in the above captioned case pursuant to Md. Rule 8-204.

ALLEGATIONS OF ERROR

On March 10, 2009, the Appellant was sentenced to a ten (10) year sentence which was orally pronounced to run consecutive to "both" his Anne Arundel County Circuit Court fifteen (15) year sentence and his Baltimore County Circuit Court sentence of two (2) years for Violation of Parole ("VOP"), totaling 27 years.

October 18, 2006, but the Court did not start his sentence until June 14, 2007, the date that he was "extradited" back to Maryland.

3. The Appellant has already served thirteen (13) years on the only legal sentence that was running before the resentencing took place and that was the first sentence imposed by the Anne Arundel County Circuit Court sentence of fifteen (15) years.

4. The Court erred by not following CPA § 6-218(b)(1)(c)(d)(e)(1)(2), when the Court "resentenced" the Appellant without giving credit for time spent in custody on the record as required.

5. At the resentencing hearing, the Attorney (Gregg Fishcher) for the Appellant clearly stated on the record that "he would be filing" a "Motion for Modification" of sentence on behalf of Mr. Neal. The Public Defender Mr. Gregg Fishcher "failed" to file the Motion for Modification, which is a violation of Neals' "Post-Sentencing Rights."

Pursuant to Md. Rules 4-342(h) concerning credit for time spent in custody shall be credited against the Petitioner's sentence pursuant to CPA § 6-218 and 5-201(b) giving the Petitioner credit against the Wilson County Jail in North Carolina (extradition), he is entitled to have this credit deducted against his sentence for the time the Appellant spent in the Wilson County Jail in North Carolina (extradition) prior to his trial. The Judge erred in refusing to give the Appellant his 239 days (7 months, 3 weeks, 6 days) from October 18, 2006 to June 14, 2007. *SEE Spriggs v. State*, 152 Md. App. 62, 831 A.2d 72 (2003)

At the time the Appellant's sentence was imposed, the Judge should have announced on the record (CPA § 6-218(e)(1)(2)) that the Appellant is to receive credit for all time served prior to the imposition of sentence and failed to state the amount of the credit and on the record as required.

(e) *Credit awarded at sentencing.*- (1) The court shall award the credit required by this section at the time of sentencing.

(2) After having communicated with the parties, the court shall tell the defendant and shall state on the record the amount of the credit and the facts on which the credit is based. (2012)

~~Federal Criminal Law § 22, 29, 31 - guaranty against double jeopardy.~~

The Fifth Amendment guaranty against double jeopardy consists of three separate constitutional protections: (1) protection against a second prosecution for the same offense after acquittal; (2) protection against a second prosecution for the same offense after conviction; and (3) protection against multiple punishments for the same offense.

Federal Constitutional Law § 848 – due process – reconviction - heavier sentence:

It is a **flagrant violation** of the due process clause of the Fourteenth Amendment for a State trial court to follow an announced practice of imposing a heavier sentence upon every reconvicted defendant for the explicit purpose of punishing the defendant for his having succeeded in getting his original conviction set aside.

Federal Criminal Law § 32 – double jeopardy – retrial – credit for time served:

The protection against multiple punishments for the same offense, afforded by the Fifth Amendment guaranty against double jeopardy, is necessarily implicated in any consideration of the question whether, in the imposition of a sentence for the same offense after conviction upon retrial following the setting aside of the first conviction, the Constitution requires that the credit be given for punishment already endured under the original sentence.

The constitutional guaranty against multiple punishment for the same offense, provided by the double jeopardy clause of the Fifth Amendment, absolutely requires that punishment by imprisonment already exacted must be fully credited in imposing sentence upon a new conviction for the same offense upon retrial after the first conviction has been set aside, and such credit must include the time credited during service of the first sentence for good behavior.

Respectfully submitted,

Boisey L. Neal # 349.871
Boisey L. Neal

18800 Roxbury Road

Hagerstown, MD. 21746